

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7535

Investigation into: (1) petition of AARP, for the)
establishment of reduced rates for low-income)
consumers of Green Mountain Power Corporation and)
Central Vermont Public Service Corporation; and (2) as)
expanded to possibly include general applicability to all)
Vermont retail electric utilities)

Order entered: 3/15/2010

SCHEDULING ORDER

On February 17, 2010, AARP filed a motion (the "AARP Motion") for a revised procedural schedule (the "Proposed Schedule") in this docket. The AARP Motion was stipulated to by the Vermont Department of Public Service ("Department") and the Group of Municipal Electric Utilities ("GMEU").¹

On February 19, 2010, the Clerk of the Board issued a memorandum establishing February 25, 2010, as the deadline for any of the remaining, non-stipulating parties to file comments on the AARP Motion. To date, I have received no comments regarding the AARP Motion from the non-stipulating parties. I therefore conclude that there is no objection to the AARP Motion or the Proposed Schedule. However, in the interim, the Proposed Schedule has been overtaken by other events. Therefore, as more fully explained, I decline to adopt the Proposed Schedule.

Also on February 17, 2010, AARP filed a motion to strike the direct, prefiled testimony of Department witnesses John Becker and Tamera Pariseau (the "Motion to Strike"). On

1. Barton Village, Inc. Electric Department, Village of Enosburg Falls Water & Light Department, Town of Hardwick Electric Department, Village of Hyde Park Electric Department, Village of Jacksonville Electric Company, Village of Johnson Water & Light Department, Village of Ludlow Electric Light Department, Village of Lyndonville Electric Department, Village of Morrisville Water & Light Department, Village of Northfield Electric Department, Village of Orleans, Inc. Electric Department, Town of Readsboro Electric Department, Swanton Village, Inc. Electric Department.

February 23, 2010, I issued a procedural order establishing March 9, 2010, as the deadline for responding to the Motion to Strike. On March 1, 2010, the Department filed a letter seeking to extend that deadline until March 12, 2010. In its letter, the Department indicated that half of the parties have affirmatively consented to this extension request.²

I hereby revise the procedural schedule as follows:

March 12, 2010	Responses to AARP motion to strike.
14 calendar days after order re: Motion to Strike	AARP files rebuttal testimony. ³
10 calendar days after AARP rebuttal testimony filed	All parties serve discovery on AARP's rebuttal testimony.
10 calendar days after rebuttal discovery served	AARP responds to rebuttal discovery.
10 calendar days after AARP responses to rebuttal discovery	All dispositive motions to be filed.
14 calendar days after dispositive motions filed	Responses to dispositive motions.
To be determined	Technical hearings.
To be determined	Direct briefs to be filed.
To be determined	Reply briefs to be filed.

2. Letter from Sarah Hofmann, Esq., on behalf of the Department, to Susan Hudson, dated March 1, 2010. In that letter, the Department further represented that it had received no response from the remaining parties in this docket.

3. At the status conference on October 29, 2009, the parties agreed that any surrebuttal testimony to AARP's rebuttal testimony would be live testimony provided at the time of the technical hearings. To date, no party has objected to proceeding in this fashion. I therefore reaffirm and incorporate this agreement into this scheduling order.

Finally, the procedural schedule I have adopted contemplates a filing date for dispositive motions. This deadline is intended to resolve a procedural ambiguity arising from a legal memorandum filed on January 15, 2010, by GMEU and Vermont Electric Cooperative ("VEC"). This memorandum expressly urges the Board to deny AARP's petition, but it was not filed in support of a motion to dismiss or a motion for summary judgment. Rather, GMEU and VEC submitted this filing of their own initiative "to frame important legal issues present in this docket at an early juncture, and to articulate the position of GMEU and VEC on those legal issues."⁴ GMEU and VEC represent that this memorandum "is offered without prejudice to the rights of parties to seek appropriate future relief relative to the sufficiency of AARP's case."⁵ GMEU and VEC then offer a detailed critique of alleged weaknesses in AARP's petition and conclude with the argument that "[u]nder these circumstances, the petition simply cannot and should not be granted by the Board."⁶

Its "no prejudice" language notwithstanding, I am concerned that the ambiguous nature of the GMEU/VEC Legal Memorandum creates uncertainty for other parties in this docket as to whether and when they must file a response. Therefore, once the deadline for filing dispositive motions becomes fixed pursuant to the terms of the procedural schedule I have adopted herein, and unless GMEU or VEC files on or before that date a formal motion for summary judgment that conforms to the requirements of V.R.C.P. 56, I will treat the legal memorandum filed by GMEU and VEC on January 15, 2010, as a direct brief that shall be considered in due course after the technical hearings. Accordingly, any party wishing to respond to the legal arguments raised by the GMEU/VEC Legal Memorandum may do so in the briefing phase of this docket, after the technical hearings, unless GMEU or VEC file a timely motion for summary judgment.

SO ORDERED.

4. GMEU/VEC Legal Memorandum dated January 15, 2010, at 1.

5. *Id.*

6. *Id.* at 3.

Dated at Montpelier, Vermont, this 15th day of March, 2010.

s/June E. Tierney
June E. Tierney, Esq.
Hearing Officer

OFFICE OF THE CLERK

FILED: March 15, 2010

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)